

THE MEDICAID ANNUITY RULES UNDER THE DEFICIT REDUCTION ACT With Insurance Strategies

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On February 8, 2006, Congress passed and the President signed a sweeping new federal Medicaid law called the Deficit Reduction Act (DRA), restricting the use of annuities in Medicaid qualification and then in December of 2006, amended it to extend these new restrictions to annuity payouts to at-home spouses.

The Michigan and Wisconsin Medicaid agencies have amended their rules to make these new federal restrictions on annuities applicable to any annuities in permanent payout status. Also, under the DRA, as before, a deferred annuity is treated as a **countable** asset for Medicaid qualification, but an **annuitized** annuity satisfying the DRA and State requirements will be treated as income. An **annuitized** annuity failing to meet the new rules will be treated as a **divestment** which will result in Medicaid disqualification.

So, what are the new restrictions? In order to be treated as income and to avoid a **divestment** treatment, an annuity must satisfy all of the following requirements:

1. The annuity cannot be deferred; it must be annuitized, i.e. paid out in regular installments over a certain period of time.
2. The payout arrangement must be in regular and equal installments.
3. The payout arrangement must be irrevocable (unchangeable).
4. The payout period cannot be longer than the life expectancy of the annuity owner according to the Medicaid tables (not the insurance company's tables).
5. The owner cannot have the right to assign or transfer his/her right to receive the payments.

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6. The State must be named as the primary beneficiary for (a) annuities owned by unmarried persons and (b) annuities owned by at-home spouses (also called community spouses) so that any Medicaid paid for the nursing home resident will be recaptured for the State after the annuity owner dies.

NOTE: An annuitized annuity owned by a married nursing home resident may name his/her spouse as primary death beneficiary, but must name the State as contingent beneficiary. Therefore, if the nursing home spouse dies first, the surviving spouse, as primary beneficiary, will receive the balance of the annuity payments, but upon his/her later death, the balance will be paid over to the State. Keep in mind that while the nursing home spouse is alive, all annuity payments must be spent down for cost of care.



Special Restrictions in Wisconsin. Wisconsin has special restriction. In order to obtain income treatment, three letters from insurance companies must be obtained which refuse to purchase the annuity in payout status. Also, Wisconsin Medicaid will also deny income treatment by obtaining an offer by J.G. Wentworth to buy the annuity at a discount.

Short-term Annuity to Fund Half-a-Loaf. One crisis strategy which can work is the purchase of a short-term immediate annuity to pay for cost of care during the penalty period.

Example: Robert has \$100,000 of cash and enters a nursing home. He buys a \$50,000 short-term annuity and makes gifts of the other \$50,000.

Result under DRA: The annuity payments will pay for cost of care during the penalty period, and Robert will qualify for Medicaid after the penalty has expired. This may not work in Wisconsin.

As a result of the DRA, the special “Medicaid-friendly” features offered by many (but not all) insurance companies to satisfy the irrevocability and life-expectancy limitation requirements explained above, are no longer worthwhile, with one exception, because of the State-as-beneficiary requirement. Keep in mind that an annuity annuitized longer than the life expectancy of the owner will be considered a divestment.

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The only Medicaid-friendly annuity surviving the DRA is an annuitized annuity owned by a married person who enters a nursing home, in which the owner names his/her spouse as primary death beneficiary.

Available Insurance Strategies After DRA

Long-Term Care Insurance. The need for Long-term Care Insurance after DRA has dramatically increased. DRA requires all States to enact special partnership Long-term Care Insurance. Michigan has not yet acted, but Wisconsin has.

The Life Insurance Alternative as Wealth Replacement. The use of life insurance on the life of the nursing home resident can replace the wealth lost to care costs. The ownership of the policy should be transferred to an Irrevocable Life Insurance Trust (ILIT) or a child to prevent it from being countable.

Example: Jane has \$125,000. She uses \$25,000 to purchase a single-premium life policy in the amount of \$100,000 to be owned by an ILIT.

Result under DRA: Nine years later, Jane enters a nursing home and all of her \$100,000 of assets is consumed for cost of care, but the \$100,000 policy is exempt.

If a nursing home admission occurs less than 5 years after the purchase of the life policy owned by an ILIT, the divestment is minimized.

Conclusion: There are many investment reasons for senior citizens to consider the purchase of annuities. Medicaid qualification may not be one of them. Long-term Care insurance is a better long-term strategy. If you would like a complete report on other legal and ethical Medicaid planning strategies, consult with a Certified Elder Law Attorney in the UP, such as Robert C. Anderson, James Steward or Paul Sturgul.

You may receive our free report on Medicaid planning by calling or writing to:

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